



**FINANCE AND ADMINISTRATION CABINET
OFFICE OF THE SECRETARY**

Ernie Fletcher
Governor

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John R. Farris
Secretary

In the matter of:

██████████ & ██████████

Contact: ██████████ & ██████████
██████████

FINAL RULING NO. 2006-74
September 13, 2006

Individual income tax assessments
for the periods ended
December 31, 1996

FINAL RULING

The Kentucky Department of Revenue (formerly known as the Kentucky Revenue Cabinet) has issued an individual income tax assessment in the amount of \$██████████ plus interest, fees and penalties against you for the 1996 tax year.. At issue are adjustments made to your 1996 individual tax returns by the Department of Revenue that disallowed the deductions for business expenses for mileage taken on Schedule A. The taxpayer was also assessed on deductions for personal property taxes, charitable contributions, gambling loss deductions and miscellaneous deductible claims. However, the only issue the taxpayer protested was the disallowance of business expenses for mileage taken on Schedule A of the Individual Income Tax return. The un-protested issues are considered final, due and owing. The following table provides a breakdown of the amount of tax due for all disallowed deductions as well as accrued interest, fees per KRS 131.440 and penalties per KRS 131.880 calculated through August 25, 2006; however interest will continue to accrue.

| Tax Year | Notice Number | Tax Due | Interest | Fees | Penalties | Total |
|--------------|---------------|------------|------------|------------|------------|------------|
| 1996 | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |
| Total | | ██████████ | ██████████ | ██████████ | ██████████ | ██████████ |

Upon review of your 1996 Kentucky individual income tax return, the Department of Revenue requested that you provide additional information regarding the amounts claimed as business mileage taken on the corresponding Schedules A. The Department of Revenue stated that the amount of business mileage taken on Schedule A was incomplete because no detailed information was provided, such as dates driven, mileage amounts and amounts per mile driven. Therefore, assessments were issued for 1996.

In addition, you requested that your case be held in abeyance pending receipt of additional information concerning the aforementioned business mileage deduction on Schedule A. The Division of Protest Resolution asked for additional information in letters dated ██████████, 2001, ██████████, 2004 and ██████████, 2005, but no response was received.

The taxpayer was unwillingly or unable to provide substantiated business mileage expenses as requested. The taxpayer was requested to provide these business mileage expenses in lieu of the actual operating and fixed costs allocable for business purposes.

Chapter 141 of the Kentucky Revised Statutes pertains to income taxes. The definitions for the chapter are found in KRS 141.010.

KRS 141.010(3) states:

“‘Internal Revenue Code’ means the Internal Revenue Code in effect on December 31, 1995, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 1998, that would otherwise terminate, and as modified by KRS 141.0101;”

KRS 141.010(9) and (10) define “gross income” and “adjusted gross income” to mean the following.

KRS 141.010(9) states:

“‘Gross income’ in the case of taxpayers other than corporations means “gross income” as defined in Section 61 of the Internal Revenue Code;”

KRS 141.010(10) states in part:

“‘Adjusted gross income’ in the case of taxpayers other than corporations means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101...”

Internal Revenue Code Section 162 and 274 allows a taxpayer to deduct substantiated business mileage expenses.

“General Rule: Commuting expenses between a taxpayer’s residence and a business location within the area of the taxpayer’s tax home generally are not deductible.

“General Rule: The standard mileage rate method is a simplified method available to both employees and self-employed persons in computing deductions for car expenses in lieu of calculating the operating and fixed costs allocable to business purposes (Rev. Proc. 99-38)”.

Generally, a taxpayer can substantiate car expenses by an exact record of the amount paid for gasoline, insurance and other costs. However, the standard mileage rate is a simplified method available to both employees and self-employed persons in computing deductions for car expenses in lieu of calculating the operating and fixed costs allocable to business purposes (Rev. Proc. 99-38).

Internal Revenue Code 274 - In order to claim any deductions, a taxpayer must be able to prove that the expenses were in fact paid or incurred. Such expenses are deemed particularly susceptible to abuse, must generally be substantiated by adequate record or sufficient evidence corroborating the taxpayer’s own statement.

Generally, expenses must be substantiated as to (1) amount, (2) time and place and (3) business purpose. A record of the elements of the expense at or near the time of the expenditure or use is supported by sufficient documentary evidence that has a high degree of credibility.

After reviewing your protest, and the applicable statutes and regulations, it is the position of the Kentucky Department of Revenue that the individual income tax assessment issued against you for the tax year 1996 of \$██████████, plus accrued interest, fees and penalties is a legitimate liability due the Commonwealth of Kentucky. This is a final ruling of the Kentucky Department of Revenue.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40602-2120, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner’s or appellant’s position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 2 (3) of 802 KAR 1:010:

1. An individual may represent himself in hearings before the Board;
2. An individual who is not an attorney may not represent any other individual, corporation, trust, estate, or partnership before the Board; and
3. An attorney who is not licensed to practice in Kentucky may practice before the Board if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE



THOMAS H. BROWN
Director
Division of Protest Resolution

████████████████████
CERTIFIED MAIL
RETURN RECEIPT REQUESTED



